



# New Mexico County Insurance Authority (NMCIA)

## Pool Policy Manual

# History and Intended Use of this Manual

This manual is intended as a compilation of the joint policies that the Board has been delegated to generate under the bylaws. Those duties as specifically listed in the bylaws will be found there and do not need a separate policy.

This manual was originally compiled in 2004, consisting of policies created in 1992, 1993 and 2003, with additional policies added in 2004, all approved by the Multi-Line Pool Board of Directors and the Workers' Compensation Pool Board of Directors. Each policy lists the date that it was approved and subsequent Board-approved revisions.

The Law Enforcement Pool, established in 1995, was a sub-set of the Multi-Line Pool and was overseen by the Multi-Line Board of Directors. Policies affecting pool and member operations in law enforcement were approved by that board.

Both the Multi-Line and Workers' Compensation Pool Boards of Directors conducted a comprehensive review of the manual in 2015 and approved changes reflected in this revised manual. Those revisions are documented in each policy by date of approval unless the revisions were minor language clean-up. Several policies were eliminated because they were no longer necessary in this manual, as some policy language was duplicated in the respective Pools' bylaws or other Pool documents, and thus removed from this manual.

Policies affecting member counties are intended to be used as a guide and are the Pools' recommendations for best practices.

In the 2015 review there were several deletions of policies or portions of policies that were covered in the 2014-2015 revision and organization of the bylaws / joint powers agreement for the Workers' Compensation and Multi-Line Pools.

This history added in December 2015 and revised in March 2021.

Effective January 1, 2020 the three pools merged into one self-insurance pool and the Pool membership elected a new board of directors to oversee the Pool.

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# Policy on Ethics and Conflicts of Interest

In an effort to assure a well-trained Board to understand the ethics, fiduciary responsibilities, and conflicts of interest, the Pool Boards of Directors adopt the following policy.

1. Each board member shall read and sign signifying their understanding of the oath on board member ethics on an annual basis.
2. Each board member shall read and sign signifying their understanding of the conflict of interest statement on an annual basis.
3. Each board member is required to participate in the annual training at the joint board retreat; and, if a board member is unable to attend the training they must arrange to receive this training within six months.
4. NMCIA shall maintain the signed records on an annual basis for each board member. Any board member not having the current signed forms shall be allowed to attend but not vote on board matters.

## Oath on Board Member Ethics

As a Member of the NMCIA Board of Directors, I recognize my fiduciary duty to the Pool as set forth in the Joint Powers Agreement and the Bylaws of the Pool. Acknowledging that fiduciary duty, I recognize my responsibility to inform and be informed with respect to issues affecting the Pool, and to actively participate in the decision-making activities of the Board.

Further, I recognize that my conduct should be consistent with the goals and objectives of the Pool, and should engender the respect, trust, and support of those we serve.

I recognize that when I am engaged in Pool business, I should conduct myself at all times so as to avoid any appearance of impropriety, or any appearance that I have used by position on the Board improperly.

I respect the opinions of my fellow Board Members, although we may disagree from time to time, and recognize that fellow Board Members should always be treated fairly, with dignity and respect.

I acknowledge that my responsibility is not to manage the Pool, but to see to it that the Pool is well managed. To that end, I will extend the same courtesy, professionalism, respect, and dignity to the Pool's administrator and staff as I would to my fellow Board Members, providing them with support, authority, and cooperation necessary to further the best interests of the Pool.

I shall exercise my responsibility to the Pool and the Pool's member counties in the following ways:

First: To the mission of the Pool, to maintain financial and managerial integrity, and to serve all counties fairly.

Second: To express the needs and concerns of the counties that Board Members represent.

Third: The records and relevant communications between attorneys and the Boards or its contracted agents are considered privileged and immune from discovery. The attorney-client privilege, when invoked (including discussions in executive sessions), applies to the named attorney, other essential personnel involved in the matter and the matters discussed.

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Board Member Name

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Date

## **Conflict of Interest**

The Pool recognizes that the various members of the Boards of Directors bring to the Pool a number of perspectives and interests that are created by the nature of the elective and appointive offices which they hold in their respective counties. The Pool recognizes that the members of the Boards of Directors, accordingly, need a benchmark, criterion or standard against which to balance the competing interests they represent.

This policy is an attempt on behalf of the Pool to provide guidelines to the members of the Board of Directors regarding conflict of interest.

1. As a Board Member, I shall not request, receive, or accept a gift or loan for myself or another if:
  - A. It tends to influence myself as a Board Member in the discharge of my official acts as a Board Member; or
  - B. If I, within two years, have been involved in any official act directly affecting the donor or lender or know that I will be involved in any official act directly affecting the donor or lender in connection with my membership on the Board.
2. I understand that the prohibition set forth in Section 1 above shall not apply to:
  - A. An occasional non-pecuniary gift, insignificant in value;
  - B. An award publicly presented in recognition of public service;

- C. A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of the state to engage in the business of making loans; or
  - D. A political campaign contribution, provided that such gift or loan is actually used in a political campaign and is subject to New Mexico law regarding such gifts or loans.
3. As a Board Member, I shall disqualify myself from participating in any official action of the Board that affects a business in which I have a financial interest as defined by Section 10-16-2 NMSA 1978, as amended.
  4. As a Board Member, I shall not acquire a financial interest at a time when I believe or have reason to believe that it will be directly affected by my official action on the Board.
  5. As a Board Member, I shall not use or divulge to any person confidential information acquired by virtue of my membership on the Board for my or another's private gain. Confidential information for the purpose of this paragraph shall be defined as all information disclosed or discussed in any executive session of the Board and any information disclosed or discussed in any meeting of the Board which is confidential under law, statute or practice and which is otherwise not available to the public.
  6. As a Board Member, if I have a financial interest which I believe or have reason to believe may be affected by actions of the Pool, I shall disclose the precise nature and value of that interest. The disclosure shall be made in writing and the minutes of the Board Meeting at which such disclosure occurs shall reflect that the disclosure has been filed. In any event, disclosure shall be made not less than once per year at the first Board Meeting of the fund year for that Pool.
  7. As a Board Member, I understand that the information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the secretary of the Board for inspection by any Pool member county representative. The valuation shall be confidential for all purposes except for proceedings for violation of the disclosure requirement of this policy.

I have reviewed the Oath on Board Member Ethics and the Conflict of Interest statement. I know I am required to comply with both. I will keep information confidential and will not participate in discussion or decisions on matters that I have a personal interest in. I will consult with the Pool's risk manager if I have any questions.

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Board Member Name

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Date

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on December 9, 1993.

Passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 8, 1993.

# Policy on Investments

The Pool Board and NMC have created a joint committee on investments, which meets on an annual basis (usually in December). This committee reviews the Investment Policy Statement on a regular basis. The NMC Finance Director maintains the investment policy and copies may be obtained from his/her office.

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on December 9, 1993.

Passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 8, 1993.



# Policy on Reserves for Pool Losses and Fund Balances

In an effort to assure prudent funding and reserving practices, the Pool Board adopts the following policy, which will be monitored on a regular basis by the Board.

1. **Specific Reserves for Incurred Losses:** Each claim shall be reserved to its maximum potential for loss based upon the known facts regarding each claim. The practice of step reserving is unacceptable.
2. **Unrestricted Fund Balance:** The intention of the Pool is to build an unrestricted fund balance that will protect the Pool from unexpected catastrophic losses and that will ultimately be used to reduce the costs of excess insurance by increasing the Self-Insured Retention (SIR) for the Pool. The Pool shall annually review the unrestricted fund balance.
3. The intention of the Pool is to maintain at a minimum one year's budget amount as the unrestricted fund balance.
4. This policy should be reviewed in conjunction with the Pool Policy on Equity Distribution.

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on April 29, 1992.

Passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on April 29, 1992.

# Policy on the Denial of Coverage

When a member submits a claim to the Pool and it appears that there is no coverage under Pool policies or where there is a reasonable dispute as to coverage, the Pool through the Pool Administrator will determine as soon as possible whether coverage is available under the policy and immediately inform the claimant and member county in writing if coverage is not available.

If there is a conflict on the question of coverage and time is of the essence, the Pool Administrator may, in order to avoid legal default, appoint representation with reservation of rights until the issue of coverage is settled. A member county will be held individually liable and be responsible for repayment of Pool expenses if coverage is provided with reservation of rights and is later determined to be outside the scope of coverage provided by the Pool.

A county may appeal to the Board of Directors the decision not to provide coverage. The appeal must be made within thirty (30) calendar days of the county being informed that coverage is not available. The appeal must be made in writing, by certified return receipt mail addressed to the Pool Administrator. The Board will follow the Joint Policy for Member Grievance Procedure to resolve a county's appeal for coverage.

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on April 29, 1992.

Passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on April 29, 1992.

# Policy on Privileged Communications

It is the position of the Pool Board of Directors that the records of the work product and relevant communications between attorneys and the Board or its contracted agents are considered privileged and immune from discovery.

In support of that position, The Board cites:

- a. Rule 1-026 of the Rules of Civil Procedure for the District Courts, which provides that matters which are privileged are not discoverable;
- b. The attorney-client privilege, which protects work products and communications between counsel and Pool members;
- c. The New Mexico Rules of Evidence, which provides for privileged communications between attorneys and their clients; and
- d. The Open Meetings Act, which provides for confidential discussions in certain instances.

Members are encouraged to be aware of and protect the attorney-client privilege. The attorney-client privilege, when invoked, applies to the named attorney and other essential personnel involved in the matter. Non-essential personnel do not participate in privileged discussions in order to preserve the attorney-client privilege.

The records and relevant communications between attorneys and the Boards or its contracted agents are considered privileged and immune from discovery. The attorney-client privilege, when invoked (including discussions in executive sessions), applies to the named attorney, other essential personnel involved in the matter and the matters discussed. (Oath on Board Member Ethics, page 5.)

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on April 29, 1992.

Passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on April 29, 1992.

# Policy on Equity Distribution

All income and assets of each coverage programs' fund (Workers' Compensation, Multi-Line, Law Enforcement) within the Pool shall be at all times dedicated to the exclusive benefit of the members of that Pool. Equity is the portion of members' contributions, exclusive of any unrestricted fund balance, that are not encumbered by the Pool. Members shall not have a vested or legal right to receive any equity distribution from a coverage programs' fund within the Pool until a distribution is formally approved by the Pool Board of Directors. Distribution of equity will be in a form prescribed by the Board pursuant to the bylaws. Distribution may be made only to current county members participating in the coverage program of the fund year for which equity is being returned. Any member that leaves a coverage program within the Pool, either voluntarily or involuntarily, shall forfeit any and all rights to equity distribution for the years in which it was in the coverage program prior to withdrawal, and shall not be entitled to any reimbursement of contributions that are to be paid or that shall become payable in the future for such years. Distributions shall be made only for fund years in which the coverage program is in an unrestricted fund balance as described in the Reserves for Pool Losses and Fund Balance policy and all claims in that fund year are closed. The Pool will be considered to be in a position to return equity only after the unrestricted fund balance has reached the targeted funding level as described below.

Prior to returning equity to member counties in the Pool, the Board will ensure that there are ample fund balances in the Pool's account at the end of the fund year. The Board shall, to the greatest extent practicable, endeavor to increase the Pool's fund balance to an amount in excess of the Pool's annual operating budget. Thus, equity will not be returned to any member county in the Pool until the audited unrestricted fund balance for the current year is in excess of its annual operating budget.

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on October 27, 2010.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on October 27, 2010.

Originally passed by the NMCI Workers' Compensation Pool Board of Directors on April 29, 1992; revised April 21, 1994. Revised and combined with the Rate Stabilization Policy on October 27, 2010.

# Policy on Special Events Requirements

The Pool recognizes that counties occasionally have the need to provide special events for their citizens, events that fall outside the scope of daily operations for county governments. Smaller counties with rural fire halls, for example, often make those facilities available to local citizens for meetings and gatherings when other public facilities are remote or unavailable. The Pool recognizes that counties must balance the needs of its citizenry with the need to exercise fairness and due caution in the provision of those services.

This policy is an attempt on behalf of the Pool to provide guidelines to counties for lending the use of its public facilities to groups not under the control or direction of county government.

Whenever possible, counties should require outside agencies and private citizens to provide proof of insurance coverage before allowing the use of a county facility. Individuals using a county facility can request special coverage for a one-time event through their homeowners insurance. Outside agencies such as Boy Scouts, Girl Scouts, and 4-H Groups should be able to show proof of coverage through their parent organization. The NMCIA Pool has arranged special events coverage for third parties specifically for this purpose; coverage is available for individuals or for groups and is called Tenant Users Liability Insurance Protection (TULIP). Contact the Pool's risk management department for details. Whenever possible, require proof of insurance before allowing the use of county facilities. Insurance should be provided to a minimum of the limits of The Tort Claims Act and should name the county as an additional insured.

However, in the event that proof of insurance is impractical or unavailable, the Pool recommends that counties use the following guidelines.

1. Require the tenant to sign a contract that specifies the facility to be used, the date and time of use, the function (be specific), the number of people who will attend, and any rental fees to be paid. The contract should state that no alcohol will be served or consumed on the county premises, and that the county assumes no liability for the activity that will take place.
2. Require the tenant to sign a waiver to hold the county harmless from any harm or liability that results from the activity or function. Include language that clarifies who will be responsible for injury or damage.
3. Review the risks involved in the activity. Consider the worst-case scenario; would the county be able to cover its liability if named as a party to the suit? What safeguards might be enacted to reduce the risk of injury or damage?

4. Will any county officials or employees attend the function? If anyone could be construed as representing the county, be sure that person is trained in the use and function of the facility, equipment, etc. and that they will adequately represent the interests of the county in maintaining safety and security.
5. Is the county truly a sponsor of the event? Is the activity within the course and scope of county services?

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on December 9, 1993.

Passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 8, 1993.



# **Pool Policy on Recommended Personnel Advice**

The Pool strongly urges member counties to consult with the Pool's General Counsel prior to dismissing, demoting, suspending or beginning leave without pay for county employees, especially if there is any question about the correct procedure to follow or if that personnel action may result in a claim or suit against the county for wrongful process.

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Passed by unanimous consent of the NMCIA Pool Board of Directors on May 12, 2021.

Reviewed/updated passed by unanimous consent of the NMCIA Workers' Compensation Fund Board of Directors on December 17, 2015.

Reviewed/updated/passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on December 8, 1993.

# Policy on New Pool Membership

Counties interested in joining the Pool or participating in a coverage program the county is not currently participating in must comply with the following:

1. Allow and cooperate with a Loss Control inspection, to be completed by an NMCIA Loss Prevention Specialist or a designee.
2. Agree to comply with all loss control recommendations resulting from the inspection and agree to comply with policies provided by the NMCIA Risk Management Department prior to membership.
3. Upon acceptance into the Pool, the County Commission must adopt the Bylaws and Joint Powers Agreement currently in use by the respective Pool; and acknowledge receipt of the policy manual and coverage agreement

Acceptance into the Pool must be by majority vote of the Pool Board of Directors.

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Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on April 29, 1992.

Passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on April 29, 1992.

# Policy on Obligations Upon Withdrawal or Expulsion

Pool members are responsible for the Pool's goals and objectives. All participants are responsible for the losses and directly benefit from the savings of the Pool. For the purpose of this policy, a loss is defined as the dollar amount of incurred losses including payments made on behalf of a county resulting from a claim made against the Pool. Payment of a loss includes all expenditures necessary to defend, settle or litigate a claim.

When a member withdraws or is expelled from a coverage program(s) within the Pool, the member is no longer entitled to any reimbursement or abatement of contributions previously paid or that the member is currently obligated to pay. A member continues to be responsible for its obligations even after withdrawal or expulsion from a coverage program within the Pool. Obligations of members include each county's own loss experience, as that may develop over time, as well as a proportionate share of expenses and losses for the entire Pool. Obligations of members that withdraw or are expelled also include cooperating fully with the Pool's attorneys and Administrator, and any other agent, contractor or officer of the Pool. In this way, the member continues to be held accountable for any losses that occurred during the term of its membership. The Pool has the right to assess a county for obligations and for losses that exceed its respective contributions to the coverage program fund. The assessment, whether for individual member counties or for all members of a coverage program within the Pool, will apply to the particular fund year or years in which the adverse losses occurred.

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Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on January 9, 1992. Reported to the Workers' Compensation Pool General Membership on January 21, 1992.

Passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on April 29, 1992.

# **Policy on Member Grievance Procedure for Disputes Involving Claims or Settlement**

The Board of Directors encourages all member counties to be informed about and involved in Pool business. Board meetings are always open to Pool members and the public, and the Board will make every effort to keep Pool members informed of all decisions made by the Board that affect Pool members. When a Pool member disputes any decision regarding claims or settlement made by the Board of Directors or the Pool Administrator of the Pool, that member may make a written request to the Board to reconsider the decision at any regular meeting or special meeting that may be called for that purpose.

In addition, the Board urges members to closely monitor and support the management of claims in their respective counties. The Board recognizes that claims may occasionally be settled or resolved in a way that benefits the whole of the Pool over the particular needs of the county, or that counties may not always agree with the decisions of the Board. This grievance procedure is established in an effort to support communications with counties and the satisfactory resolution of any disputes involving claims or settlement.

When a Pool member disputes the decision of the Pool Administrator or of the Board of Directors, the member may file a written complaint with the Board. The complaint should specify the county's desired outcome or resolution. The Board will determine the date and time of the grievance hearing at a time and place mutually convenient to all parties concerned. Notice of the hearing shall be sent to the grieving party via postal and/or electronic mail at least seven days prior to the scheduled hearing unless otherwise agreed by the parties. Copies of the notice shall be sent to all relevant parties. Grievance hearings shall be conducted as an open meeting, with notice given to the public pursuant to the New Mexico Open Meetings Act, unless the subject matter meets one of the exceptions to the Open Meetings Act.

The Board Chair, or his or her appointee, shall preside over the grievance hearing. Minutes shall be taken of the grievance hearing unless appropriately closed pursuant to the Open Meetings Act, and the rules of procedure followed during regular Board meetings shall prevail.

The grievant carries the burdens of proceeding and persuasion. Statements and arguments of each party are limited to the pertinent issues and shall not exceed ten (10) minutes without permission of the Chair.

Pursuant to the Open Meetings Act, deliberations on these hearings can properly be held in a closed session.

The Board's decision shall be final.

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on April 29, 1992.

Passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on April 29, 1992.

# **Policy on Compliance with Risk Management Recommendations**

It is the obligation of each member of the Pool to fully cooperate with the Pool's Administrator, abide by the provisions of the Bylaws and Joint Powers Agreement and to undertake and continue loss reduction and prevention procedures adopted by the Board. This includes all loss control recommendations issued by the NMCIA Risk Management Staff.

If a Pool member is found to be in noncompliance with loss control recommendations, the Pool Board may issue a schedule of compliance. If the county does not comply with the schedule of compliance, cooperate with the Pool's Administrator, or abide by the provisions of the Pool's Bylaws, the Pool Board may assess a monetary penalty to that county, may consider expulsion, may suspend coverage or portions of coverage, or may take other appropriate action.

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Revised/passed by unanimous consent of the NMCIA Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on April 29, 1992.

Passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on April 29, 1992.

# **Policy on Unlawful Harassment, Sexual Harassment, and Other Unlawful Discrimination**

Unlawful harassment, sexual harassment, and other unlawful discrimination in the work environment are illegal and intolerable. Accordingly, members of the Pool must reduce exposure through a combination of clear and strict policies, swift and immediate investigation of claims and thorough training.

The Pool Board of Directors requires each member county to adopt a Harassment, Sexual Harassment, and Discrimination Policy that:

1. states the county's commitment to maintain a harassment-free work environment to avoid legal liability and to maintain positive employee relations;
2. applies to the actions of all county elected officials, employees, and appointed officials, volunteers and contractors;
3. prohibits sexual harassment, defined as any unwanted sexual attention, comments, gestures, conduct or contact. Sexual harassment also includes unwanted sexual attention, comments, gestures, conduct or contact when:
  - a) submission is made a term of an individual's employment, either explicitly or implicitly;
  - b) submission to or rejection of the harassment by an individual is used as a basis for employment decisions affecting that individual; and
  - c) the harassment has the purpose of affecting or unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
4. outlines fair and confidential procedures for handling complaints and allegations of harassment, sexual harassment, and discrimination that protects against retaliation for filing or testifying as a witness to a complaint;
5. ensures that appropriate corrective measures, up to and including dismissal and appropriate legal action, will be taken if this policy is violated.
6. assures each county trains all county elected officials and employees on their policies.

- (6.1.) Each county shall upon request by the Pool make available all training records and sign in sheets showing attendance and content of the training.
  - 6.2 The training must include a discussion on the severe and real penalties which may be imposed upon an individual and the county.
  - 6.3 Elected officials and employees shall be informed that they may be held individually liable for their discriminatory actions and that the county may not reimburse them if they are held individually liable for sexual harassment, sexual misconduct, or other discriminatory behavior. Non-compliance may result in higher contributions and/or other actions as approved by the Board.
- 7. instructs elected officials, managers, and supervisors to take prompt action with respect to all discrimination or harassment complaints. Immediate consultation between the complaining individual and appropriate personnel or employee relations professionals is encouraged; and
  - 8. informs employees of their right to file a complaint directly with their immediate supervisor, department director, the Federal Equal Employment Opportunity Office, or the State of New Mexico Human Rights Commission.

Non-compliance may result in higher contributions and/or other actions as approved by the Board.

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Passed by unanimous consent of the NMCIAPool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCIAPool Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCIAPool Multi-Line Pool Board of Directors on December 16, 2015.

Revisions approved by the NMCIAPool Workers' Compensation Fund Board of Directors on December 4, 2003.

Revisions approved by the NMCIAPool Multi-Line Pool Board of Directors on December 3, 2003.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on April 29, 1992.

Passed by unanimous consent of the NMCIAPool Multi-Line Pool Board of Directors on April 29, 1992.



# Policy on Hiring New County Drivers

The Pool Board of Directors requires each member county to adopt a hiring procedure that screens potential employees who will be required to drive county vehicles or equipment for driving violations, and in particular, for records of DWI offenses. DWI offenses constitute a serious exposure for the county and the Pools, and must be regarded with the gravity demanded by public trust.

**To the extent and in a manner consistent with the Criminal Offender Employment Act, the Pool recommends that counties consider in its hiring decision DWI convictions of any prospective employee whose job description includes driving county vehicles or equipment if that employee has had a DWI conviction within the most recent three years.** Counties need to clearly state the importance of a clean driving record to all potential employees whose job descriptions include the need for a valid driver's license and whose duties will include driving. Potential employees should be asked to state in writing any driving violations in their driving history. Counties must check Motor Vehicle Division driving records, and compare the record with the applicant's statement of driving violations, before a job offer is made to a potential employee.

For all existing employees, each member county must conduct semiannual Motor Vehicle Division driving record checks. Each county should institute a disciplinary procedure for violation of driving laws or policies, including timely driving restrictions for employees with moving vehicle violations. Counties should protect the privacy of all employee driving records and any subsequent disciplinary procedures. Each county shall upon request by the Pool make available all driving record checks.

Non-compliance may result in higher contributions and/or other actions as approved by the Board.

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on April 29, 1992.

Passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on April 29, 1992.

# Policy on Defensive Driving

A large percentage of the Pool's injuries occur while employees are driving vehicles or operating equipment. Defensive driving training can increase the safety of county employees and reduce the number of accidents and insurance expenses for counties.

The Board of Directors requires each member county to adopt a defensive driving policy that states the county's commitment to provide defensive drivers training for all county employees and county elected officials who drive county vehicles. In addition, the Pool recommends that defensive drivers training be offered to all county employees and elected officials.

Each county's defensive driving policy must require each county employee whose job description includes driving to comply with the following:

1. Pass a National Safety Council, a New Mexico Counties, or an equivalent defensive driving course within the first six months of employment;

An equivalent course must contain the following elements: The types, causes and effects of distracted driving. The laws prohibiting cell phone use and impaired driving. The symptoms and consequences of driving while fatigued. The common causes of county vehicle accidents such as following too closely, backing up, and speeding. The training must contain a testing element to confirm the level of comprehension.

2. Maintain certification (through a refresher course) at least every three years by attending a defensive driving course from the National Safety Council, New Mexico Counties, Local Gov U (Driving While Distracted), or an equivalent course. These courses may be completed through in-person training or online;
3. Meet all New Mexico and Federal licensing requirements; and
4. Sign an agreement never to drive a county vehicle while impaired by the influence of drugs or alcohol (sample agreement attached).

Each county shall, upon request by the Pool, make available defensive driving policies.

Non-compliance may result in higher contributions and/or other actions as approved by the Board.

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Passed by unanimous consent of the NMCIAPool Board of Directors on October 11, 2023

Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on May 9, 2019.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on March 13, 2019.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Revisions approved by the NMCI Workers' Compensation Pool Board of Directors on December 4, 2003.

Revisions approved by the NMCI Multi-Line Pool Board of Directors on December 3, 2003.

Passed by the NMCI Workers' Compensation Fund Board of Directors on April 29, 1992 and on October 11, 2001.

Passed by the NMCI Multi-Line Pool Board of Directors on April 29, 1992 and on October 10, 2001.

# Policy on County Safety Committees

County safety committees have proven to be effective tools for counties to control and reduce losses. Safety committees achieve this by working with representatives from all departments within the county, which increases communication and accountability among county employees. Safety committees can improve communications between line employees and management, as well. The purpose of a safety committee is to define objectives of the safety program, develop policies, monitor workplace safety and losses, increase employee awareness concerning loss prevention, and ensure the effectiveness of loss prevention activities.

The Pool recommends each member county create a county safety committee. The county safety committee should:

- 1) include at least one representative from the sheriff's department, the road department, building maintenance, detention centers, elected officials, and general administration.
- 2) develop a mission statement, an agenda for each meeting, and maintain meeting minutes;
- 3) review all claims, accidents and losses, and make appropriate loss prevention/safety recommendations to management;
- 4) review accidents and injuries to determine causes and make recommendations to management;
- 5) recommend risk control techniques to management in order to avoid future losses;
- 6) meet and consult with individuals who have an extraordinary high number of safety incidents (the committee is not intended to act in the area of discipline);
- 7) work with the NMCIA Risk Management staff in the implementation of policies;
- 8) conduct inspections to confirm the implementation of risk control policies;
- 9) educate employees, elected officials and management about the need for risk management;
- 10) design and implement a program to recognize employees with exemplary safety records;
- 11) review the use of personal protective devices by county employees; and

- 12) promote safety awareness and a safe working environment for all employees; and
- 13) at least annually, review the county's safety and loss prevention policies, and make recommendations to modify as necessary.

In addition, the policy should require that any accidents that include great bodily harm, hospitalization, or death, should not be reviewed by any committee without authorization from the County Attorney.

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Revisions approved by the NMCI Workers' Compensation Fund Board of Directors on December 4, 2003.

Revisions approved by the NMCI Multi-Line Pool Board of Directors on December 3, 2003.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on April 29, 1992.

Passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on April 29, 1992.

# Policy on Personal Protective Equipment Usage

The Pool recommends each member county adopt a personal protective equipment usage policy. Counties are encouraged to obtain the sample policy provided by NMCIA and include the elements as set forth in the sample policy.

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Passed by unanimous consent of the NMCIA Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCIA Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on December 16, 2015.

Revisions approved by the NMCIA Workers' Compensation Pool Board of Directors of December 3, 2003.

Revisions approved by the NMCIA Multi-Line Pool Board of Directors on December 3, 2003.

Passed by unanimous consent of the New Mexico Counties Workers' Compensation Fund Board of Directors on April 29, 1992.

Passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on April 29, 1992.

# Policy on County Vehicle Use

Operation of county vehicles is a significant risk exposure to every county. Vehicle accidents represent a substantial liability to the county. Vehicle accidents resulting in personal injury and property damage represent needless suffering, waste, and unnecessary cost to the county.

Everyone is expected to drive in a safe, reasonable, and defensive manner. When operating a county vehicle, employees will maintain their full attention to driving activities. No phase of the job is of greater importance than safe driving.

The Pool recommends each member county adopt policies covering county vehicle use. County vehicle use includes but is not limited to county take home vehicles, ride alongs, texting and cell phone use while driving, emergency vehicle use, volunteer non-county employee drivers, seatbelt use, pre-use "walk around" inspection, use of personal vehicles for county business, et cetera. Sample policies are available through NMCIA upon request.

Non-compliance may result in higher contributions and/or other actions as approved by the Board.

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Passed by unanimous consent of the NMCIA Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCIA Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on December 16, 2015.

Passed by the NMCIA Multi-Line Pool Board of Directors on December 3, 2003.



# Policy on Fleet Accident Review Board

It is the position of the Pool Board of Directors that operation of county vehicles poses a significant risk exposure to county government. The loss of limited funds and equipment, and cost of human suffering is enormous; therefore, every county has a responsibility to preserve and protect its human, financial, and capital resources.

The Board encourages development and implementation of a well-defined comprehensive fleet accident review process designed to reduce fleet accidents and employee injuries, minimize auto liability exposure, and afford an impartial, equitable, and consistent review process. The program should include:

1. driver standards;
2. an accident review process;
3. defined county expectations;
4. drivers' training requirements; and
5. an employee accountability mechanism.

In addition, the policy should require that any accidents that include great bodily harm, hospitalization, or death, should not be reviewed by any committee without authorization from the County Attorney.

The fleet accident review committee can be part of a county's safety committee.

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Adopted by the NMCI Workers' Compensation Pool Board of Directors on October 16, 2003.

Adopted by the NMCI Multi-Line Pool Board of Directors on October 15, 2003.

# **Policy on Bloodborne Pathogen Exposure Control Plan**

County employees are at tremendous risk of contracting an infectious disease, specifically, detention officers, deputies, solid waste employees, fire and EMS staff, maintenance staff, and other employees contacting bloodborne pathogens. Due to the potential for contact and the ramifications of a single bloodborne exposure, counties are required by the Occupational Safety and Health Administration (OSHA) to develop a written Bloodborne Pathogen Exposure Control Plan for employees having an occupational exposure to blood or any other potentially infectious material.

The Pool recommends each member county adopt a bloodborne pathogen exposure control plan. Counties are encouraged to obtain the sample policy provided by NMCIA and include the elements as set forth in the sample policy.

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Passed by unanimous consent of the NMCIA Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCIA Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on December 16, 2015.

Passed by the NMCIA Workers' Compensation Pool Board of Directors on December 4, 2003.

Passed by the NMCIA Multi-Line Pool Board of Directors on December 3, 2003.

# Policy on Housekeeping

Effective housekeeping procedures are essential for maintaining a safe and healthy work environment; no loss prevention program will succeed if housekeeping is not taken seriously. Good housekeeping reduces accidents, improves morale, and increases efficiency and effectiveness.

The recommends each member county adopt a housekeeping policy. Policies should include the following:

Every employee is responsible for ensuring that all work areas are clean and properly maintained.

All buildings, offices, passageways, storerooms, and service areas shall be kept clean, orderly, and in a sanitary condition to the extent that the work allows. Each facility should be cleaned on a regular basis or as often as necessary to maintain a clean and sanitary environment.

All garbage, combustibles, flammables, and other hazardous waste shall be disposed of timely and in accordance with applicable standards.

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Passed by unanimous consent of the NMCIA Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCIA Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on December 16, 2015.

Passed by the NMCIA Workers' Compensation Pool Board of Directors on December 4, 2003.

Passed by the NMCIA Multi-Line Pool Board of Directors on December 3, 2003.

# **Policy on Materials Handling and Lifting Policy**

Nationally, it is estimated that manual materials handling and lifting accounts for a significant percentage of all occupational injuries. These injuries are not limited to the warehouse or maintenance departments, but come from all activities, because it is impossible to run a county without moving or handling materials.

The Pool recommends each member county adopt a materials handling and lifting policy. Counties are encouraged to obtain the sample policy provided by NMCIA and include the elements as set forth in the sample policy.

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Passed by unanimous consent of the NMCIA Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCIA Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCIA Multi-Line Pool Board of Directors on December 16, 2015.

Passed by the NMCIA Workers' Compensation Pool Board of Directors on December 4, 2003.

Passed by the NMCIA Multi-Line Pool Board of Directors on December 3, 2003.

# **Policy on Autonomy of Detention and Sheriff Operations**

The Pool Board recognizes that administration and operation of a county detention facility is a local decision to be made by the county's Board of County Commissioners, in accordance with NMSA 1978 § 33-3-1. The Pool Board encourages separation and autonomy of these functions; professional sheriffs should oversee law enforcement functions, while professional detention administrators should manage detention operations.

The Board recognizes that law enforcement and detention operations are unique and that they are uniquely different. Each discipline has specific requirements and expectations. Historically, these functions were consolidated; however, due to changes and advancements in society, civil rights entitlements, and court decisions, each discipline has evolved into a distinct profession.

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Workers' Compensation Fund Board of Directors on December 17, 2015.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by the NMCI Workers' Compensation Pool Board of Directors on February 5, 2004.

Passed by the NMCI Multi-Line Pool Board of Directors on February 4, 2004.

# Pool Policy Statement on Detention Officer Background Checks

Applicants for law enforcement positions cannot obtain state certification if they have been convicted, or have pled guilty, or have entered a plea of nolo contendere, to any felony charge. See NMSA 1978, §29-7-6. New Mexico law, however, does not explicitly impose the same limitations on applicants for detention officer positions at county detention centers. This is the case even though detention officers have the power of a peace officer when holding a person accused or convicted of a crime in custody and can arrest and enforce laws inside the detention center, or while transporting or supervising persons committed to or under the supervision of the detention center. See NMSA 1978, §33-3-28.

The NMCIA Board of Directors believes it is in the public interest, and consistent with legislative intent, for counties not to employ individuals as detention officers if they have been convicted, or have pled guilty, or have entered a plea of nolo contendere, to any felony charge. The Board of Directors adopts this Policy to require the member counties to apply the same standards as listed in NMSA 1978, Section 29-7-6 for Law Enforcement Officers to Detention Officers as "Peace Officers" for purposes of NMSA 1978, Section 33-3-28. This Policy is based upon NMCIA Board of Directors' opinion that county detention centers are law enforcement agencies for purposes of Section 28-2-5 NMSA 1978.

"Detention Officers" are county employees having custody and control over persons incarcerated in a county detention center, or having custody and control while transporting or supervising incarcerated persons committed to or under supervision of the county detention center.

In addition to performing a criminal and employment background records check, counties shall also comply with the hiring and promotion decision standard for adult jails promulgated by the U.S. Department of Justice in 28 C.F.R. §115.17. Among other things, this requires counties to consider any incidents of sexual harassment in determining whether to hire or promote anyone. In addition, Counties shall not hire or promote anyone to work in their detention centers who (1) has engaged in sexual abuse in a secure facility or a facility providing skilled nursing, custodial or residential care, (2) has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or (3) has been civilly or administratively adjudicated to have engaged in the activity described in the clause 2 of this sentence. Counties shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in the previous sentence in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. Counties shall also impose upon employees a continuing affirmative

duty to disclose any such misconduct. Finally, counties shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.

Non-compliance may result in the Board imposing higher contributions, assessing a monetary penalty to that county, expulsion, or suspension of coverage or portions of coverage or taking other appropriate action.

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Revised/passed by unanimous consent of the NMCI Pool Board of Directors on November 4, 2021.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by the NMCI Multi-Line Pool Board of Directors on April 21, 2004.

# **Pool Policy Statement on Litigation Procedures**

Due to the nature of county services and changes in society, litigation is inevitable; however, how governmental agencies respond will have a significant impact on the outcome. For this reason, every county should have a policy that delineates procedures for receiving notice of potential litigation, defines authorized representatives, and prohibits improper release of information.

Counties are encouraged to obtain the sample policy provided by NMCI and include the elements as set forth in the sample policy.

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Passed by unanimous consent of the NMCI Pool Board of Directors on May 12, 2021.

Revised/passed by unanimous consent of the NMCI Multi-Line Pool Board of Directors on December 16, 2015.

Passed by the Multi-Line Pool Board of Directors on April 21, 2004.



# Policy on Loss Prevention Training

Loss Prevention Training is funded by the NMCI Pool to reduce losses across a wide variety of our members' operational categories. Loss prevention trainings are available to pool members on a first-come, first-served basis, at no additional cost – such trainings are funded through pool members' contributions.

Where a non-participatory member, or a non-member, desires to participate in a particular loss prevention training being offered to address a risk for which it declined coverage from the pool, the training is available under the following conditions:

1. If space is available and if NMC extends the training opportunity to non-participatory members and non-members; and
2. If the training involves costs for materials, instructors, training rooms, etc., then such attendees must pay the prorated costs associated with the training. Costs will be communicated during the training offer and registration.
3. The minimum charge for each training for non-participatory members and non-members will be a calculation including both hard and soft costs associated with offering the training. Hard costs include but are not limited to vendor fees and training materials; soft costs include but are not limited to staff time.

Any exceptions to the above listed rules requires the approval of the Risk Management Director.

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Passed by unanimous consent of the NMCI Pool Board of Directors on June 24, 2021.

# **Policy on Joint Multi-Line and Law Enforcement Liability Coverage for Members**

The Pool Board oversees and has superintending authority over the Multi-Line and Law Enforcement coverage programs. The Board desires to protect the integrity and financial stability of both programs because legal exposure for law enforcement and detention activities is far greater than the areas covered by the Multi-Line program.

If both coverages are offered by the Board, they both must be taken together. The Board requires counties to be members of the Multi-Line coverage program in order to be eligible for coverage in the Law Enforcement coverage program.

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Passed by unanimous consent of the NMCI Pool Board of Directors on March 29, 2023.

# Policy on Capital Adequacy

The NMCIA Board understands that it is imperative that the financial position of the Pool remain strong for the benefit of its' members. This policy on capital adequacy is based on an analysis by PricewaterhouseCoopers of the levels of risk acceptable to the NMCIA Board as of August 2023.

Their assessment concluded that in the next one-year time horizon, there is a 0.5% chance (1-in-200-year event) that the financial risks (balance sheet and next year's business only) will result in more than \$54 million demand on program capital.

This policy is based on the following capital adequacy measures and guidelines voted on by the Board August 9, 2023:

- The minimum level of capital adequacy is defined as a 1-in-20-year capital event. If the net position is or projected to be below this level (\$31 million), immediate corrective action is required to restore the capital adequacy to the minimum level within 12 months.
- The desired risk capital target range is defined as having a lower bound (\$54 million) of a 1-in-200-year capital event and an upper bound (\$109 million) of 2 times a 1-in-200-year capital event. The lower bound is consistent with the 99.5% confidence level expectation contained in the global insurance regulation. The upper bound is established to recognize there is a point where funding can become excessive based on other financial needs of the membership. Staff will create a funding plan to reach the lower bound over a several year timeframe.
- Once the lower bound has been achieved, staff will create a funding plan to include guidelines on achieving a middle target amount (\$81.5 million) over a several year timeframe. The plan will include contingencies for funding sooner than the plan timeframe and criteria for how to allocate any funds that exceed the middle target.

<sup>1</sup>The PricewaterhouseCoopers assessment document resides on the [Administration drive](#) with the Pool policy manual.

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Passed by unanimous consent of the NMCIA Pool Board of Directors on December 21, 2023.